JD(SF)–14–15
Phoenix, AZ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO BRANCH OFFICE

SB TOLLESON LODGING, LLC
D/B/A BEST WESTERN TOLLESON-
PHOENIX HOTEL

and Case 28–CA–131049

LATONYA BEDONIE, An Individual

William Mabry III, Esq., and *Stefanie Parker, Esq.*,
for the General Counsel.
Jeffrey E. Toppel, Esq., *(Jackson Lewis P.C.)*
for Respondent.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in Phoenix, Arizona, on December 16–17, 2014. LaTonya Bedonie (Bedonie or the Charging Party) filed the charge on June 18, 2014.[1] The General Counsel issued the complaint on August 29, 2014.

The complaint alleges that SB Tolleson Lodging, LLC d/b/a Best Western Tolleson-Phoenix Hotel (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by: (1) since on or about June 9, by Front Desk Manager Kasi DeWitt (DeWitt), at its facilities threatening employees with discharge if they engaged in protected concerted activity; (2) since on or about June 9, by DeWitt, at its facilities engaging in surveillance of employees to discover their protected concerted activities; (3) since on or about June 9, by DeWitt, at its facilities creating an impression among its employees that their protected concerted activities were under surveillance; and (4) on or about June 18, discharging the Charging Party because she engaged in protected concerted activity in June when she discussed and concertedly complained about the treatment the employees received from their supervisor. Respondent filed a timely answer denying the alleged violations in the complaint.

[1] All dates are in 2014 unless otherwise indicated.

On the entire record[2], including my observation of the demeanor of the witnesses[3], and after considering the briefs filed by the General Counsel and Respondent[4], I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a limited liability company, provides lodging on a short-term basis at its facility in Tolleson, Arizona, where it derived gross revenues in excess of $500,000. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Operations

Respondent operates a 60-room short-term lodging hotel (Tr. 21).[5] Respondent admits, and I find, that the following individuals are supervisors within the meaning of Section 2(11) of

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[2] The transcripts in this case are generally accurate, but I make the following corrections to the record: Transcript (Tr.) 11, Line (L.) 24 and Tr. 13, L. 18: "oppression" should be "impression;" Tr. 13, L. 15: "Section 881" should be "Section 8(a)(1);" Tr. 52, L. 16: "Stewart" should be "DeWitt;" Tr. 90, L. 25: "by" should be "my;" Tr. 97, L. 16: "6:58" should be "6:48;" Tr. 130, L. 7: "the" should be "you;" Tr. 179, L. 3: speaker is not the undersigned but Mr. Toppel; Tr. 188, L. 8: "known" should be "none;" Tr. 231, L. 3: "react" should be "redact;" and Tr. 232, L. 16: "abstained" should be "staying."

[3] In making my findings regarding the credible evidence, including the credibility of witnesses, I considered the testimonial demeanor of such witnesses, the content of the testimony and the inherent probabilities based on the record as a whole. In certain instances, I may have credited some but not all, of what the witnesses said. "Nothing is more common in all kinds of judicial decisions than to believe some and not all" of the testimony of a witness. *Jerry Ryce Builders*, 352 NLRB 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds, 340 U.S. 474 (951). See also *J. Shaw Associates, LLC*, 349 NLRB 939, 939–940 (2007). In addition, I have carefully considered the testimony in contradiction to my factual findings, but I have discredited such testimony, either as having been in conflict with credited documentary or testimonial evidence, or because it was in and of itself incredible and untrustworthy.

[4] Other abbreviations used in this decision are as follows: "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "GC Br." for the General Counsel's brief; and "R. Br." for the Respondent's brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record.

[5] Respondent previously was known as Sleep-N-Go and Comfort Inn (Tr. 56, 226; GC Exh. 4).

the Act and agents within the meaning of Section 2(13) of the Act: General Manager Ken Kriske and Front Desk Manager (or Supervisor) Kasi DeWitt (GC Exh. 1(c), 1(e), 1(f)).[6] Kriske, during the relevant time period of April to June 2014, oversaw the hotel's operations (Tr. 20). DeWitt who has been the front desk manager since the end of 2013 reported to Kriske (Tr. 22, 55–56, 59, 206).[7] DeWitt's responsibilities include overseeing the day-to-day staffing and operations of the hotel including scheduling, payroll, hiring and discipline (Tr. 20–21, 207–208). DeWitt also inspects the hotel rooms after the housekeepers complete their daily assignments to ensure they are cleaned according to Respondent's standards (Tr. 213).

Respondent uses 5 surveillance cameras on its property (Tr. 226–227). One camera is located behind the front desk and points down from the ceiling with a view of the front desk, breakfast area and front door (Tr. 227). Another camera points to the computers located in the lobby (the business center), 2 cameras point to the 2 exit doors, and 1 camera points to the pool (Tr. 227). DeWitt testified, unrefutted, that the cameras record only video, not audio (Tr. 228, 262). DeWitt testified that she has no role in operating the cameras but that the surveillance footage may be viewed in the general manager's office (Tr. 227). From April to June 2014, a password-protected application on the general manager's computer showed the video footage (Tr. 227). DeWitt stated that she has no access to the video (Tr. 228).[8]

The staff DeWitt supervises includes the van drivers, front desk employees, housekeepers and breakfast attendants (Tr. 21, 56, 113–114, 208). Respondent cross-trains employees to perform a variety of duties at the hotel. Respondent employs approximately 5 to 7 employees who have been approved to drive the hotel shuttle van (Tr. 50, 57). Respondent trains these drivers to also work as front desk employees (Tr. 57). The drivers employed by Respondent from April to June 2014, included Diana Roberts (Roberts) and Gene Romero (Romero). Respondent employs approximately 5 to 6 front desk employees (Tr. 57). Front desk employees check guests in and out of the hotel make housekeeping reports and monitor the housekeepers (Tr. 192). Sharlene Despain who began working for Respondent in late April or early May 2014, works as a front desk employee (Tr. 191–192).

Respondent also employs approximately 6 to 12 housekeepers with varying schedules based on hotel occupancy (Tr. 21, 57, 61). Housekeepers clean the lobby, hallways, and guest rooms; maintain inventory control on hygiene items for the guest rooms; and manage their housekeeping carts (Tr. 26). Generally, Respondent schedules housekeepers to work from 8 a.m. to 5 p.m. (Tr. 21). The housekeepers employed by Respondent from April to June 2014, included Lucille Jones (Jones) (Tr. 60, 209).

Respondent employs at least one breakfast attendant whose shift starts at 6 a.m., with breakfast service ending at 9 a.m. (Tr. 218, 225). Only one breakfast attendant works per day

[6] Kriske ended his employment with Respondent in the fall of 2014.

[7] DeWitt began working at Respondent in October 2006 as a front desk employee (Tr. 205–206).

[8] A general manager in 2013 set the password on the application but no one knew the password after he or she left employment with Respondent, and only the latest general manager, after Kriske, reset the password with computer assistance (Tr. 228).

(Tr. 63–64, 225). Breakfast attendants prepare breakfast for hotel guests, and clean the kitchen and lobby (Tr. 114). As long as Respondent maintains at least 20 percent hotel occupancy, then a breakfast attendant needs to be on duty (Tr. 64). If less than 20 percent hotel occupancy, Respondent serves breakfast but does not have a breakfast attendant on duty (Tr. 211–212, 224). Instead, Respondent could have the scheduled breakfast attendant perform housekeeping duties (Tr. 64, 211). Respondent hired the Charging Party as a breakfast attendant but also gave her rooms to clean if there was a need (Tr. 63). After the Charging Party began employment at the hotel, Kriske hired Lilia Silva as a breakfast attendant and to clean carpets (Tr. 94).[9]

DeWitt creates the employees' schedules, and the general manager approves the available hours to be scheduled based on hotel occupancy (Tr. 22, 220). Respondent informs applicants that the jobs at the hotel require an individual to be willing to work a flexible schedule due to the variability in hotel occupancy (Tr. 218–220; R Exh. 1). DeWitt posts the employees' schedule a week in advance by the time clock, in an area behind the front desk, and in the housekeeping room (Tr. 23, 62, 92, 222). DeWitt also makes copies of the schedule which she places behind the front desk for the housekeepers, provides copies to the drivers, and places copies of the schedule in the front desk employees' drawers (Tr. 62, 222–223). If an employee did not work on the day DeWitt posted the schedule, the employee knew to call the hotel and find out what his or her schedule is for the week (Tr. 31). On occasion, Respondent calls employees to cancel their scheduled workday due to changes in work needs (Tr. 32, 62–63, 221). Either DeWitt or another front desk employee maintains responsibility for informing employees by telephone if they do not need to come into work that day (Tr. 63).

Employees clock in and out of their shifts at the biometric timeclock located in a hallway between the general manager's office and the front desk (Tr. 23).[10] If an employee needs

[9] When Silva was hired, Bedonie began getting fewer hours occasionally (Tr. 93).

[10] According to Kriske, Respondent retained all records of employees' clock-in and clock-out times (Tr. 23). However, DeWitt later testified that Respondent did not retain all records from the timeclock (Tr. 80). When employees left the position, Respondent's various management officials would have removed the employees' profiles in the timekeeping system (Tr. 80). DeWitt, as custodian of record, reviewed all records responsive to the General Counsel's subpoena request dated December 3, 2014, (GC Ex. 3), and testified under oath that she provided all time keeping records available and responsive to the request (Tr. 80–84, 186–189). I credit DeWitt's testimony since she has worked at Respondent for several years and actually reviewed Respondent's records to respond to the General Counsel's subpoena requests. Thus, I decline the General Counsel's request to make an adverse inference against Respondent for failure to provide the time records (GC Br. at 15–17). In addition, the General Counsel argues that Respondent failed to provide the time records for Despain and DeWitt pursuant to the subpoena; however, the subpoena does not request these records. Generally, it is improper to draw an adverse inference if a satisfactory explanation is provided for the failure to produce the documents. See *Hansen Bros. Enterprises*, 313 NLRB 599, 608 (1993) (discriminatee credibly testified that old tax returns did not exist); *Champ Corp*., 291 NLRB 803 (1988), enfd. 933 F.2d 688 (9th Cir. 1990), cert. denied 502 U.S. 957 (1991) (union presented credible testimony concerning its good faith but unsuccessful search for subpoenaed notes, and other evidence supported reasonable inference that notes could have been inadvertently destroyed or misplaced).

specific days off or changes to the schedule, employees must inform Respondent 2 weeks in advance (Tr. 65; GC Exh. 2). If within the 2 week period, employees need a change in the schedule, they must switch with another employee and obtain approval from the general manager or the front desk manager (Tr. 65; GC Exh. 2).

B. Respondent's Housekeeper Rules and Disciplinary History

When considering applicants for housekeeping positions, Respondent provides those individuals with the housekeeper job description (Tr. 214; R. Exh. 1).[11] Upon hiring, Respondent requires all employees to complete new hire paperwork, and housekeepers specifically must read and sign a set of rules governing their employment (GC Exh. 2; Tr. 57). Generally, the front desk manager provides this paperwork and rules to the new hire employees (Tr. 58). These rules include disciplinary procedures for late arrivals to work (GC Exh. 2). If an employee is late 3 times, then he or she will receive a write-up, and 3 write-ups result in termination (GC Exh. 2; Tr. 68).

Furthermore, the rules provided to housekeepers included ranges of time for cleaning the rooms (GC Exh. 2). Housekeepers should spend 15 to 20 minutes on a room where the occupant plans to stay overnight and 30 minutes to clean a room where the occupant checks out (GC Exh. 2). If the room requires more time for any reason including being very dirty, the housekeeper should notify the head housekeeper or front desk employees (GC Exh. 2). In addition, housekeepers should document their in and out times on the housekeeping reports (GC Exh. 2). Respondent places these documents in the employee's personnel files (Tr. 68).

Everyday housekeepers receive a housekeeping report which lists the rooms they are to clean, and other details for their work assignments (Tr. 169). DeWitt checks all rooms cleaned after the housekeepers complete their assigned tasks (Tr. 229). DeWitt provides feedback to the housekeepers the following day on this same housekeeping report, and she also speaks with the employee providing feedback (Tr. 233, 236–237). DeWitt considered these written feedbacks on the reports to be a form of "counseling" on what the employee can do better, and not disciplinary actions (Tr. 236, 259).

Over the past 2-year period, Respondent discharged 5 employees. In April 2013, a housekeeping supervisor terminated a housekeeper for work standards due to complaints received on the rooms she cleaned, tardiness, failure to follow call-in procedures, and failure to attend a mandatory meeting; DeWitt completed the paperwork (GC Exh. 4; Tr. 89). In March 2014, Kriske terminated a housekeeper (DeWitt's brother's partner) because she was late more than 3 times and directed profanity at her; DeWitt completed the paperwork (GC Exh. 4; Tr. 74). Thereafter, Kriske terminated the housekeeper's husband (DeWitt's brother) who was one of Respondent's van drivers for insubordination when he disagreed with Kriske regarding the firing of his partner and used profanity on the phone with Kriske; DeWitt completed the paperwork (GC Exh. 4; Tr. 43, 74, 90). In March 2014, DeWitt issued a housekeeper a written memo regarding her unacceptable performance (GC Exh. 6). DeWitt placed the employee on a 2-week

[11] The first 60 days of employment is considered the probationary period for new hire employees (GC Exh. 2; Tr. 23, 25, 68).

probationary period, and gave her a warning of termination if her performance failed to improve (GC Exh. 6). DeWitt discharged the housekeeper shortly thereafter due to insubordination and work standards (GC Exh. 5). DeWitt further explained that the housekeeper had been written up several times while on her probationary period (GC Exh. 6). In April 2014, the housekeeping supervisor terminated another housekeeper for work standards because she failed to clean rooms correctly during her 2-week probationary period; DeWitt completed the paperwork based on the reasons provided by the housekeeping supervisor (GC Exh. 6; Tr. 107).

C. Charging Party's Employment at Respondent

1. Respondent hires Bedonie on April 7.

Respondent hired Bedonie on April 7 as a breakfast attendant although the term "housekeeping" was listed as her job title on her new hire form (R. Exh. 2).[12] Head housekeeper Hernandez hired Bedonie (Tr. 60, 216).[13] DeWitt, who was not working when Hernandez hired Bedonie, completed some of Bedonie's new hire paperwork after she had been selected (Tr. 217). This paperwork indicates that she was classified as a regular part-time employee (Tr. 94, 217; R. Exh. 2). However, Bedonie worked variable hours per week from part-time to full-time hours with a start time of 6 a.m. (GC Exh. 7). Bedonie generally received Thursday and Friday off (Tr. 114–138; GC Exh. 7).[14] At times, DeWitt sent Bedonie home after the breakfast ended if there were no other duties to perform (Tr. 85–86, 235). From May 19 to June 1, and on June 15, timekeeping records show Bedonie clocked in at least 6 times later than her 6 a.m. start time (GC Exh. 7). DeWitt testified that Bedonie's late arrival impacted the hotel's ability to serve breakfast on time (Tr. 238). Bedonie testified that she "just felt unfairly mistreated" by DeWitt (Tr. 115).

I do not find Bedonie's testimony to be generally credible and reliable. Bedonie testified several times that she had been hired by Respondent on March 10 (Tr. 59, 85, 113, 171). However, Respondent hired Bedonie on April 8 as indicated by her new hire paperwork (R. Exh. 2). Bedonie testified that she regularly worked from 6 a.m., to 2:30 p.m., and that she was hired as a full-time employee with a 40-hour work week (Tr. 115). Bedonie's new hire paperwork shows she was hired as a regular part-time employee, and even if the information on the bottom of the paperwork was completed after she signed the form, she should reasonably know whether she was hired as a full or part-time employee. This form was completed by DeWitt per the instructions of Kriske and Hernandez (Tr. 217). Furthermore, Bedonie's work

[12] Bedonie incorrectly testified several times that she had been hired by Respondent on March 10 (Tr. 59, 85, 113, 171).

[13] Subsequently, Respondent moved Hernandez to van driver because of a shortage of drivers, and did not backfill the position (Tr. 67–68, 209). Hernandez currently works as a driver at Respondent (Tr. 68).

[14] The documentary evidence in this case is scant. DeWitt testified that Bedonie worked various days per week, and did not necessarily have the same days off per week (Tr. 223). However, from May 19 to June 1, Bedonie did not work on Thursdays and Fridays as she testified. Thus, I do not find DeWitt's testimony credible as to the variability in Bedonie's days in which she was scheduled to work for the month of May.

hours reflect variability in hours worked per day and week (GC Exh. 7). For example, the week of May 19, Bedonie worked approximately 40 hours (GC Exh. 7). However, the week of May 26, she worked approximately 31.5 hours per week (GC Exh. 7). Under cross-examination, Bedonie admitted that when she was hired she was not guaranteed to receive 40 hours per week (Tr. 136).

Bedonie also alleges that on June 7, she involuntarily became a part-time employee and would need to clock out at 10:30 a.m. rather than 2:30 p.m. (Tr. 137). However, timekeeping records refute this claim. The record shows that before June 7, Bedonie often worked approximately 5 to 6 hours per day, clocking out anywhere from 11 a.m. to 1 p.m. (GC Exh. 7). The record shows that on June 15 and June 17, Bedonie clocked out a little after 10:30 a.m. However, the schedule for the week of June 16 indicates that Bedonie was scheduled to work Monday, Tuesday, Saturday, and Sunday, 6 a.m. to 12 p.m. (not 10:30 a.m.) for breakfast and side duties, and could be given rooms to clean if needed (GC Exh. 2).

2. Bedonie's Work Assignments and Feedback Prior to June 1

On Sunday, May 11, DeWitt noted on a housekeeping report that Bedonie must obtain permission before staying at work to help another housekeeper complete her room cleaning assignment (Tr. 232; R. Exh. 3). The next day, Monday, May 12, DeWitt spoke to Bedonie about the need to get permission before staying at work to help others finish their assignments (Tr. 233). Bedonie admitted that on more than one occasion she stayed past her scheduled clock-out time of 2:30 p.m., and that she needed approval to stay past her shift end time (Tr. 143–144).

On Wednesday, May 14, 3 days after being informed she needed supervisory approval to stay past her shift, Bedonie noted that she again helped another housekeeper with her room cleaning until the rooms were done (GC Exh.2). The next day she received a note from DeWitt on her housekeeping form stating, "please don't stay past your end time 8 hours without permission from supervisor when your rooms are done. Now both you and Estela would be O.T." (GC Exh. 2; Tr. 171). Bedonie admitted that DeWitt spoke to her about going "over" (Tr. 171, 244). DeWitt went over Respondent's guidelines concerning overtime, and the need to clock out for lunch if she worked over 8 hours in a shift (Tr. 244).

On Monday, May 26, DeWitt noted on the housekeeping report that Bedonie needed to write her in and out time on the housekeeping report and that she should complete her work by 12 to 12:30 p.m. (Tr. 234; R. Exh. 4). Bedonie then noted on this form that she completed her work at 12:19 p.m. (R. Exh. 1). DeWitt testified that she had been having problems with Bedonie clocking out at the incorrect time which is why she indicated the time the work should be completed (Tr. 234).

On Saturday, May 31, Bedonie clocked in at 6:50 a.m. (GC Exh. 7; Tr. 239). That day DeWitt noticed that Bedonie had been late a number of days (Tr. 240).[15] DeWitt did not realize prior to May 31 that Bedonie had been late because she did not arrive at work until 1 to 2 hours

[15] Time records show Bedonie clocking in late 6 times during a 2-week period in May (GC Exh. 7).

after Bedonie started her shift (Tr. 240). DeWitt spoke to Kriske about Bedonie's tardiness, and he said he would speak with Bedonie (Tr. 240). Kriske did not speak to Bedonie so DeWitt spoke to her about her tardiness on June 9 (Tr. 264).[16]

1st Alleged Protected, Concerted Activity Conversation: On Saturday, May 31, Bedonie spoke with Romero in Respondent's van at approximately 6 p.m., while Romero took Bedonie to the emergency room, about "me having issues--or me and Gene talking getting unfairly treated by Kasi" (Tr. 116–117, 142, 167, 174).[17] Bedonie stated that she did not like how DeWitt treated her, and thought she was unfair and mean to her (Tr. 143, 167). Bedonie stated that she did not let DeWitt know she went to the emergency room that day because it was already 6 p.m., and she usually clocks out at 2:30 p.m., and did not need to return to work (Tr. 117). No one else was present during the conversation, and DeWitt and Kriske denied knowledge of the conversation.

3. Bedonie's Work Experiences from June 1 to June 4.

Bedonie testified that she felt DeWitt became "mad" with her beginning on Sunday, June 1 (Tr. 167). That day, Bedonie spoke with DeWitt in a hallway at the hotel (Tr. 117). DeWitt informed Bedonie that she needed to clock out by 2:30 p.m., and Bedonie responded that she may be a little slow (Tr. 117). DeWitt asked Bedonie if she had a doctor's note, and while Bedonie started to respond that she did, DeWitt walked away (Tr. 117). Bedonie clocked out that day at 3:20 p.m. (GC Exh. 7). DeWitt did not deny the conversation with Bedonie took place.

2nd Alleged Protected, Concerted Activity Conversation: On Monday, June 2, Bedonie spoke with Roberts in the hallway between the kitchen and the lobby restroom (Tr. 118, 147). Bedonie discussed "issues about Kasi [DeWitt]" with Roberts (Tr. 117).[18] No one else was present during the conversation, and DeWitt and Kriske denied knowledge of the conversation.

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[16] DeWitt alleges this conversation took place on June 6 (Tr. 240), but Bedonie testified that the conversation occurred on June 9 because she did not work on Friday, June 6 (Tr. 264). Because I do not have the timesheet for June 6 and because Bedonie appeared to have Fridays off, I credit her testimony that the conversation took place on June 9.

[17] Bedonie clocked out at 12 p.m. on May 31 (GC Exh. 7). It is unclear why Romero drove Bedonie in Respondent's van to the hospital at 6 p.m. that day. Furthermore, although Bedonie's testimony regarding her conversation with Romero is hearsay, I accept that Bedonie spoke to Romero that day about her "issues" with DeWitt. Romero allegedly told Bedonie that he felt that DeWitt was no good and he felt that she was racist" (Tr. 116–117).

[18] Again, Bedonie's conversation with Roberts is hearsay but I accept that Bedonie spoke with Roberts regarding "issues with Kasi [DeWitt]." Roberts advised Bedonie to talk with Jones if she had any problems (Tr. 118). Roberts also stated that she had spoken to Kriske about how DeWitt treated Bedonie (Tr. 118). Roberts then said to Bedonie that there was no point in talking to Kriske (Tr. 118). Roberts told Bedonie to "just keep doing your job because you're doing your job anyways" (Tr. 118). Respondent nor the General Counsel questioned Kriske as to whether this conversation with Roberts occurred.

On Tuesday, June 3, according to Bedonie, DeWitt told her to go home early (Tr. 119). While Bedonie was mopping in the lobby, DeWitt approached her, told her that she would finish the work, and that she was done (Tr. 119, 134). Bedonie then went around the front desk to check her clipboard to see what other duties she needed to complete and DeWitt grabbed the clipboard out of her hand stating, "You're done here" (Tr. 119–120). DeWitt asked Bedonie to clock out, which she did (Tr. 119). Thereafter, Bedonie spoke with Jones in the hallway about being sent home early (Tr. 135). DeWitt upon seeing Bedonie and Jones talking, then told them that she did not have Bedonie clock out so Jones could talk with her (Tr. 135, 166).

3rd Alleged Protected, Concerted Activity Conversation: On Wednesday, June 4, Bedonie and Jones spoke at the front desk (Tr. 120). No one else was present for this conversation. Jones told Bedonie that from that point on she needed to clock out at 10:30 a.m. when she was done with the kitchen and her "little" side duties (Tr. 120). Jones also informed Bedonie that she would now be a part-time employee (Tr. 120).[19] DeWitt and Kriske denied knowledge of the conversation.

On either June 5 or 6, DeWitt created and distributed the schedule for the week of June 16 (Tr. 245). The schedule, created by DeWitt, contains a note at the bottom stating, "Tonya [Bedonie] can get rooms to clean after breakfast and side duties if needed!" (GC Exh. 2; Tr. 22, 230).

4. Bedonie and DeWitt's Conversation About Her Tardiness

On Monday, June 9, DeWitt finally approached Bedonie in the kitchen area about being late (Tr. 66, 91, 240). Bedonie admitted she came in past 6 a.m., at either 6:03 or 6:04 a.m., that day (Tr. 121). The housekeeper rules came up during this conversation, and Bedonie informed DeWitt she had never seen the documents (Tr. 66, 240–241). DeWitt stepped away from the conversation to grab the housekeeper rules from another location and showed them to Bedonie asking whether she had seen the documents (Tr. 66). Bedonie responded she had not seen the housekeeper rules, and DeWitt told Bedonie that she should have received and signed the documents when she was first hired (Tr. 66). DeWitt reiterated some the contents of the housekeeper rules to Bedonie, specifically covering the procedures for tardiness (Tr. 241–242). Bedonie denied knowledge that she was required to call in to one of the managers to inform them

[19] Jones admittedly is not an agent or supervisor as defined by the Act (Tr. 112). Thus, her statement is not imputed to Respondent as a change in Bedonie's working conditions. Even if Jones made this statement to Bedonie, Bedonie failed to clarify the veracity of it with DeWitt. Furthermore, the limited documentary evidence provided in this case shows that even after June 4, DeWitt scheduled Bedonie to work from 6 a.m. to 12 p.m. the week of June 15. Although Bedonie clocked out on June 15 and 17 around 10:30 a.m., the schedule indicates she could have worked until noon which undermines the legitimacy of what was told to her. Furthermore, Respondent hired Bedonie as a regular part-time employee which she should have known considering the variability of the hours she received to work. Finally, the week of June 16 schedule created by DeWitt indicates that Bedonie could clean rooms after her breakfast duties if there was a need.

of her late arrival; Bedonie would call the front desk and leave a message regarding her late arrival (Tr. 67, 241). DeWitt also told Bedonie that Jones had complained that Bedonie could not do her job (Tr. 153). While Bedonie read the forms, DeWitt commented that she took too long to read and that's why she does not clean rooms (Tr. 153). Bedonie eventually signed both forms.[20] DeWitt testified that she was prepared to issue a write-up to Bedonie for her tardiness but decided against it because Bedonie had not received the housekeeper rules upon hiring as she should have (Tr. 243). [21]

4th Alleged Protected, Concerted Activity Conversation: After her conversation with DeWitt, Bedonie spoke to Roberts in the laundry room about DeWitt's "mistreatments" (Tr. 125). Bedonie testified that she had been crying privately, and Roberts asked her what was wrong (Tr. 147). Bedonie told her that she was upset because of DeWitt (Tr. 147). Roberts told

[20] Bedonie signed and dated the first page of the housekeeper rules as June 9 (GC Exh. 2). She signed and dated the second page as June 6 (GC Exh. 2).

[21] Neither Bedonie nor DeWitt are completely credible regarding this conversation. DeWitt, as discussed previously, cannot be credited regarding the date the conversation occurred. Furthermore, DeWitt seemed to downplay the discomfort Bedonie had with their conversation; Bedonie clearly became upset and cried which led to her subsequent conversations with 2 other employees. However, I find Bedonie lacked even more credibility regarding her conversation with DeWitt on the procedures for calling in late to work.

Of most importance, Bedonie alleges that after DeWitt came back to Bedonie from getting the housekeeper rules from behind the front desk, she said, "if I catch you talking to other employees about me again, you're fired" (Tr. 123). Bedonie then asked DeWitt how she would know, and DeWitt said, "I've been watching you in the cameras and I caught you on recording." DeWitt denied that she ever threatened Bedonie's employment or watched her on the surveillance cameras (Tr. 229). Bedonie's testimony appeared fabricated. The impetus for the conversation between Bedonie and DeWitt was Bedonie's tardiness to which Bedonie admitted. DeWitt sought to emphasize housekeeper rules Bedonie should have received when she was hired but then learned that Bedonie had never received the documents. It makes little sense for DeWitt to suddenly threaten Bedonie with discharge and tell her she has seen her on the surveillance tapes. Even if DeWitt viewed the surveillance tapes, DeWitt credibly testified the video had no audio so it is unlikely she would know the content of the conversations. Furthermore, presumably, the employees at Respondent talk with one another at least occasionally, and even if DeWitt observed the employees on the video tape conversing, she would not know the contents of the conversation.

Moreover, Bedonie failed to mention in her pretrial affidavit taken on July 9 that DeWitt told her she knew she spoke to other employees about herself via the surveillance cameras (Tr. 153). A matter of such importance, both the threat and the mention of surveillance cameras, would certainly have been contained in Bedonie's statement most proximate to the date of the conversation. When testifying Bedonie also failed to mention that DeWitt informed her that Jones criticized her work performance; however, this statement was mentioned in her July 9 affidavit (Tr. 153). Hence, although I cannot completely credit either DeWitt or Bedonie regarding the conversation on June 9, I find Bedonie less credible than DeWitt.

Bedonie that if she got caught talking to Bedonie she would get in trouble, and the 2 separated (Tr. 125, 148).[22]

5th Alleged Protected, Concerted Activity Conversation: Thereafter, Bedonie went into the parking lot, and Jones came out at DeWitt's request to check on why Bedonie was crying (Tr. 125, 148). Bedonie complained to Jones about how DeWitt mistreats "us" (Tr. 125).[23] Jones told Bedonie that DeWitt also mistreated her and made her cry when she first started (Tr. 125, 174–175).[24]

5. Bedonie's Work Performance After Receiving the Housekeeper Rules

On Saturday, June 7, DeWitt and Bedonie spoke in a hotel guest's room regarding an inventory list (Tr. 120–121). DeWitt asked Bedonie why she had not given her the inventory list herself rather than having Jones give it to DeWitt (Tr. 121). Bedonie replied that she planned to give it to DeWitt after she completed her shift which is why she left it on the washer (Tr. 121). DeWitt accused Bedonie of lying and told her to clock out after she finished the room (Tr. 121). Bedonie alleges that at this point her hours began to be reduced but she did not confront DeWitt about this issue (Tr. 267).[25] Neither the General Counsel nor Respondent questioned DeWitt about this conversation.

On Tuesday, June 10, DeWitt noted on Bedonie's housekeeping report that she failed to clean a room which did not have a "do not disturb" sign on the door (Tr. 236). The housekeeper rules, which Bedonie received by June 9, notes to housekeepers to double check all DND (do not disturb) rooms a few times throughout their shift and make sure before they are done for the day that the room is still DND (GC Exh. 2). She advised Bedonie to check the room a couple times

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[22] As in the other conversations, Bedonie's testimony regarding Roberts' response to her is hearsay. However, I accept Bedonie's testimony that after her conversation with DeWitt she spoke with Roberts in the laundry room.

[23] Bedonie's testimony regarding Jones' response is hearsay but I accept that the conversation took place.

[24] I do not credit Bedonie's version of events after talking with DeWitt on June 9 for a number of reasons. Bedonie claims that Roberts asked her what was wrong, but then when Bedonie began to tell her, Roberts allegedly said she would get in trouble if they were "caught" talking. It is unlikely that Roberts would solicit a response from Bedonie but then subsequently say they should not be talking. Furthermore, if DeWitt did threaten Bedonie that day with discharge based on her surveillance of Bedonie, it is highly unlikely that she would then send Jones out to the parking lot to check on Bedonie since DeWitt would have already known why Bedonie was crying.

Kriske also testified about this event although he did not specify the date. Kriske informed DeWitt that someone appeared to be in the smoking area of the hotel crying (Tr. 86). DeWitt saw that it was Bedonie and sent housekeeper Jones to check on her since the two were friends (Tr. 86).

[25] It is unclear from the record if Bedonie's hours actually were reduced at this point because the only timesheets in the record are from May 19 to June 1, and June 15 to 18 (GC Ex. 7), and the only employee work schedule in the record is for the week of June 16 (GC Ex. 2).

to try to clean it (Tr. 236). She also spoke to Bedonie about this issue the following day (Tr. 236). On June 10, Bedonie noted that she completed her work at 11:08 a.m. (R. Exh. 5).

On Wednesday, June 11, Bedonie and Kriske spoke in the conference room (Tr. 126). According to Bedonie, Kriske told her to apologize to DeWitt "for the way she [DeWitt] is towards" her (Bedonie), and if they could not work it out, then Bedonie should look for another job (Tr. 126).[26] Bedonie complained to Kriske about how DeWitt treated her on a daily basis (Tr. 126). Bedonie admitted that neither Kriske nor DeWitt were present for any of the conversations she had with other employees except for the conversation on June 3 with Jones (Tr. 169).[27]

On Monday, June 16, Bedonie, scheduled to work 6 a.m. to 12 p.m., performing breakfast and side duties, received a text message from DeWitt telling her not come to work because they did not need a breakfast attendant that day (Tr. 127, 145, 224). Bedonie called to confirm, and DeWitt told her that they only had occupancy of 20 hotel rooms (Tr. 127). According to Bedonie, June 16 was the only day she did not serve as breakfast attendant on her regularly scheduled work day (Tr. 162).[28]

[26] Kriske could not recall this conversation with much detail. He did recall Bedonie approaching him once regarding an issue she had with DeWitt and cleaning the lobby (Tr. 50). Kriske could not recall the details of the conversation including whether Bedonie raised issues of being treated unfairly by DeWitt (Tr. 50). Kriske further stated that he did not know if Bedonie had complained about DeWitt to other employees at the hotel (Tr. 52). Because Kriske provided vague and uncertain testimony, I credit Bedonie's version of this meeting.

[27] Bedonie testified that she "felt unfairly mistreated" by DeWitt, and discussed Dewitt with Kriske, Jones, Romero, Ann, Amanda, Gustavo, and Preston (Tr. 115). However, the record is devoid of evidence of Bedonie's conversations with Ann, Amanda, Gustavo, and Preston.

[28] On Tuesday, June 17, Bedonie went to work and noticed that the kitchen looked differently than the way she had left it last (Tr. 127). Jones informed Bedonie that the hotel served breakfast on Monday, June 16 (Tr. 127). DeWitt confirmed the hotel served breakfast but did not have a breakfast attendant present (Tr. 225). By eliciting this testimony, the General Counsel seems to suggest animus by DeWitt by cancelling Bedonie's scheduled workday but still serving breakfast. However, the record shows that Respondent always serves breakfast but only has a breakfast attendant on duty when the hotel exceeds 20 percent occupancy.

6. Bedonie's Last Day of Work, June 18[29]

On June 18, Bedonie clocked in at work at 5:56 a.m. (Tr. 52, 68). The scheduled breakfast attendant Silva called DeWitt on her cell phone between 6:20 to 6:30 a.m., to inform her that Bedonie reported to work that day (Tr. 93, 246).[30] Upon learning that Bedonie had come into work unscheduled, DeWitt called Kriske to notify him of the "situation," and Kriske told DeWitt to send Bedonie home (Tr. 97, 247). DeWitt then called the hotel front desk to talk with Bedonie (Tr. 247). DeWitt asked Bedonie why she was at work, to which Bedonie stated that she was there to work (Tr. 247). DeWitt asked her to clock out but she received no response (Tr. 247).

DeWitt arrived at work from her home, which is less than 5 minutes from the hotel, prior to Bedonie clocking out at 6:48 a.m. (Tr. 97, 248). DeWitt grabbed the schedule located in housekeeping and the front desk and approached Bedonie who was in the kitchen which is part of the lobby (Tr. 99, 248).[31] DeWitt asked Bedonie why she came to work even though she was not scheduled (Tr. 70, 99). Bedonie at first stated that she did not know she was not working (Tr. 70, 248–249). DeWitt questioned the legitimacy of Bedonie's response because Bedonie had worked Monday and Tuesday that week, and should have seen the schedule (Tr. 70, 249).[32] Then, according to DeWitt, Bedonie stated that she could not afford to have 3 days off, Wednesday was not normally one of her days off, and thought that it was unfair (Tr. 71, 248–

[29] For the events of June 18, I cannot rely on any one witness' version of events. I rely on DeWitt and Kriske's testimony regarding the sequence of events since they corroborated one another. Furthermore, Kriske, who is no longer employed by Respondent, has no obvious reason not to be candid in his testimony. Finally, I find Despain's testimony not credible. Despain testified that Bedonie refused to clock out and said she would keep working, and then cursed at DeWitt (Tr. 195–196). However, DeWitt testified Despain came in 10 minutes after she arrived so at most Despain witnessed the end of their exchange, and thus, I will not rely on it.

I cannot rely on Bedonie's sequence of events except for when she clocked out because she provided inconsistent statements throughout these proceedings regarding the events of June 18. In the July 9 affidavit, Bedonie claims that when she asked DeWitt why she was being fired, DeWitt replied because Bedonie did not listen, did not look at the schedule (Tr. 163, 168). In her second affidavit, given on August 6, Bedonie stated that when she asked DeWitt why she was fired, DeWitt told her that she did not have to tell her and that they are in a right-to-work state (Tr. 167–168). At the trial, on direct examination, Bedonie stated that after DeWitt fired her, Bedonie remarked, "are you serious," to which DeWitt replied she was and walked away (Tr. 130). Even if as the General Counsel argues that DeWitt made both sets of statements to Bedonie when she was fired, on direct examination, Bedonie failed to mention <u>any</u> reasons given by DeWitt but rather she walked away (Tr. 175). Thus I do not find Bedonie credible for the events of June 18.

[30] The schedule shows Silva to work from 6 a.m. to 2 p.m. with duties of breakfast and cleaning carpets (GC Exh. 2).

[31] Confined to one open space area, the lobby measures approximately 400 square feet and includes the front entry, front desk, computer center, and kitchen (Tr. 53).

[32] DeWitt incorrectly testified that Bedonie worked Monday of that week but instead, DeWitt cancelled work for Bedonie on Monday due to low occupancy at the hotel.

49).[33] DeWitt, becoming "a little irritated," again asked Bedonie to clock out but she refused, and instead sat on the couch in the lobby where her phone was charging (Tr. 71, 249). DeWitt again told Bedonie to clock out and go home (Tr. 71). Bedonie told her that she was calling for a ride (Tr. 249). DeWitt repeated that Bedonie needed to clock out and go home (Tr. 249). If Bedonie disagreed, DeWitt told her to call Kriske (Tr. 249).

Thereafter, Bedonie clocked out at 6:48 a.m. (GC Exh. 7), and sat back on the couch (Tr. 250). Then she came behind the front desk to speak with DeWitt (Tr. 250). There was 1 hotel guest in the vicinity of the lobby (Tr. 131).[34] Bedonie told DeWitt to "get over here now," and that she needed to talk with DeWitt (Tr. 250). Then Bedonie told her what she was doing was not fair, and DeWitt reiterated that Bedonie had clocked out and needed to go home. DeWitt told Bedonie that she could call Kriske if she did not agree with DeWitt's decision (Tr. 250). Bedonie then said, "you're a fucking bitch" (Tr. 250). Bedonie walked around the corner, slammed the door to the front desk, and said, "that's why nobody likes you around here" (Tr. 250). Bedonie walked out the sliding door (Tr. 250). DeWitt further added that cameras were recording the "situation" (Tr. 69).

Thereafter, DeWitt called Kriske to inform him that Bedonie had directed profanity at DeWitt and refused to leave the hotel while sitting in the lobby (Tr. 33, 35, 52, 54 250–251). Kriske admitted that DeWitt did not mention if hotel guests were present when Bedonie used profanity nor did he ask DeWitt if hotel guests were present (Tr. 35–36, 52–54). Kriske told DeWitt to "go ahead and fire her" (Tr. 251). Ultimately, Kriske and DeWitt decided jointly to terminate Bedonie (Tr. 27, 52, 70–71).

Kriske testified that Bedonie was fired because she was late to work multiple times, and because on one occasion, she came to work when she was not scheduled, used profanity and refused to leave the hotel (Tr. 27–29, 52). Kriske testified further that he was unaware of the number of times Bedonie was late to work but recalled that it was at least 6 times as told to him by DeWitt and by his review of the payroll records (Tr. 29–30).

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[33] The schedule shows Bedonie scheduled that week on Monday and Tuesday, and not scheduled on Wednesday, Thursday and Friday (Tr. 92).

[34] DeWitt stated that the video showed DeWitt training another employee, Sharlene Despain, who was also behind the front desk (Tr. 69–70). The video also showed hotel guests eating breakfast and 2 hotel guests checking in to the hotel (Tr. 70); later DeWitt testified there were 3 guests present in the lobby (Tr. 260). Although I find overall DeWitt's testimony more credible that Bedonie's testimony, because Respondent failed to produce the recordings due to lack of knowledge on how to make these copies (Tr. 69), pursuant to the General Counsel's request (GC Br. at 10), I draw an adverse inference that the recording, which is without audio, would show one customer who was talking to two other employees, in the lobby 40 to 50 feet away from DeWitt and her (Tr. 131). It is Respondent's responsibility to overcome any technological barriers and provide a copy to the General Counsel. However, I decline to make an adverse inference that the recording would have a time stamp since the record is devoid of testimony regarding whether the recordings show the time stamp. Perhaps most important, there is no dispute that Bedonie cursed at DeWitt, and that there was at least one hotel guest present along with at least one other employee.

DeWitt testified that Bedonie was fired because she came to work unscheduled, refused to clock out and made a "scene" in front of other guests (Tr. 69, 262). DeWitt stated that she could not terminate Bedonie for being late since she accepted that Bedonie had not received the housekeeper rules until June 6 but that she considered Bedonie's lateness overall with regard to work standards (Tr. 71–72).[35] DeWitt stated that Bedonie had trouble with taking too long cleaning the hotel rooms, and along with the incident on the morning of June 18, she decided (along with Kriske) to fire Bedonie (Tr. 71–72). DeWitt stated that Bedonie's discharge was for her work standards (Tr. 72).

DeWitt called Bedonie on her cell phone 15 minutes later to let her know she would no longer be needed, and that she could drop off her uniforms and pick up her checks in a couple of days (Tr. 251).

On June 19, DeWitt noted on the written paperwork documenting Bedonie's termination that she was terminated because she "wasn't performing duties properly" (GC Exh. 4; Tr. 48). DeWitt did not mark any of the potential categories for reasons for termination on the paperwork including insubordination or work standards (GC Exh. 4).

III. Discussion and Analysis

A. Witness Credibility

Because of the numerous significant conflicts among the testimony given by DeWitt, Kriske, Despain and Bedonie, a decision must be made as to which parts of the sharply differing accounts are credible. A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the records as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of event, particularly when the witness is the party's agent). Credibility findings need not be all of all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, supra.

Along with my credibility findings set forth above in the findings of fact for this decision, I found the testimony of DeWitt to be mostly credible despite a few minor contradictions. I conclude that DeWitt related the facts accurately, logically and to the best of her ability to do so. DeWitt provided generally specific and detailed testimony. In make the above findings of

[35] Bedonie did not receive any write-ups for tardiness or any other performance reason but DeWitt had given her verbal counselings on her performance and spoken to her about her tardiness (Tr. 91, 131). Bedonie also admitted that other employees had been tardy, and that they were at the very least verbally counseled on not being tardy to work (Tr. 132, 156).

fact, I relied extensively on the testimony given by DeWitt. In addition, I based some of the findings of fact on the documentary evidence in the record.

In contrast, Bedonie's testimony generally was vague, inconsistent and with little detail especially concerning her "issues" with DeWitt. Bedonie also did not know many of the details of her work status such as whether she was full-time or part-time. Bedonie's credibility was further weakened when she alleged that Jones told her that she would now need to clock out at 10:30 a.m., but subsequent schedules, which DeWitt created, showed that she was to work until 12 p.m. Bedonie's credibility also weakened when testimony regarding her pretrial affidavits arose. During the investigation of this case, Bedonie provided 2 pretrial affidavits. The initial affidavit she provided, shortly after her discharge, failed to include any facts regarding the alleged threat and surveillance conducted by DeWitt along with differing testimony on the events of June 18. I find these discrepancies significant.

I also relied in part on Kriske's testimony but discredited Despain completely. Kriske had not worked for Respondent for a few months at the time of the trial, and clearly had not reviewed any evidence to refresh his memory of practices and procedures of the hotel. Furthermore, it is clear from the record that DeWitt generally handled day-to-day operation of Respondent, while Kriske managed from a "distance." As for Despain, her testimony was not completely accurate, and it appears she missed a large portion of the exchange between Bedonie and DeWitt. Thus, I did not rely upon her testimony.

B. Bedonie did not Engage in Activities that were Concerted or for Mutual Aid or Protection.

The initial inquiry to be made in this case is whether Bedonie engaged in protected concerted activity when she discussed her complaints about DeWitt's supervision with other employees. To be protected under Section 7 of the Act, employee conduct must be both "concerted" and engaged in for the purpose of "mutual aid or protection." *Fresh & Easy Neighborhood Market,* 361 NLRB No. 12, slip op. at 3 (2014). Although these elements are closely related, they must be analyzed separately. Id.

The Board has held that activity is concerted if it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), revd. sub nom *Prill v. NLRB*, 755 F. 2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action" and where an individual employee brings "truly group complaints to management's attention." *Meyers II*, 281 NLRB at 887. An individual employee's complaint is concerted if it is a "logical outgrowth of the concerns of the group." *Every Woman's Place*, 282 NLRB 413 (1986); *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992), after remand, 3 10 NLRB 831 (1993), enfd., 53 F.3d 261 (9th Cir. 1995). In certain circumstances, the Board had found that "ostensibly individual activity may in fact be concerted activity if it directly involves the furtherance of rights which inure to the benefits of fellow employees." *Anco Insulations, Inc.*, 247 NLRB 612 (1980). Conversely, concerted activity does not include activities of a purely personal nature that do not envision group action. See *United Association of Journeymen and Apprentices of the Pipefitting Industry of the United*

States and Canada, Local Union 412, 328 NLRB 1079 (1999); *Hospital of St. Raphael*, 273 NLRB 46, 47 (1984). The question of whether an employee has engaged in concerted activity is a factual one based on the totality of the circumstances. *National Specialties Installations*, 344 NLRB 191, 196 (2005). It is clear that the Act protects discussions between two or more employees concerning their terms and conditions of employment.

Recently, the Board held that whether an employee's activity is concerted depends on the manner in which the employee's actions may be linked to those of her coworkers. Fresh & Easy Neighborhood Market, supra at 3. The Supreme Court has observed that "[t]here is no indication that Congress intended to limit [Section 7] protections to situation in which an employee's activity and that of his fellow employees combine with one another in any particular way." *NLRB v. City Disposal Systems*, 465 U.S. at 835. Concertedness is analyzed under an objective standard. *Fresh & Easy Neighborhood* Market, supra at 4. Employees act in a concerted fashion for a variety of reasons, some altruistic and some selfish. Id. citing *Circle K Corp.,* 305 NLRB 932, 933 (1991), enfd. mem. 989 F.2d 498 (6th Cir. 1993). Solicited employees do not have to share an interest in the matter raised by the soliciting employee for the activity to be concerted. Id. at 6, citing *Mushroom Transportation,* 330 F.2d 683, 685 (3d Cir. 1964), *Circle K Corp.,* 305 NLRB at 933; *Whittaker Corp.,* 289 NLRB 933, 934 (1988); and *El Gran Combo,* 284 NLRB 1115, 1117 (1987).

The concept of "mutual aid or protection" focuses on the goal of the concerted activity; whether the employee or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. Id. citing Eastex, Inc. v. NLRB, 437 U.S. 556, 565 (1978). Employee motive is not relevant to whether the activity is engaged in for mutual aid or protection. Fresh & Easy Neighborhood Market, supra at 6. The analysis focuses on whether there is a link between employee activity and matters concerning the workplace or employees' interests as employees. Id. Although personal vindication may be among the soliciting employee's goals, that does not mean that the soliciting employee failed to embrace the larger purpose of drawing management's attention to an issue for the benefit of all of his or her fellow employees. St. Rose Dominican Hospitals, 360 NLRB No. 126, slip op. at 4 (2014).

Furthermore, employee discussions that do not include representatives of their employer are protected. The Board has made clear that employee discussions with coworkers are indispensible initial steps along the way to possible group action and are protected regardless of whether the employees have raised their concerns with management or talked about working together to address those concerns. Hispanics United of Buffalo, 359 NLRB No. 37, slip op. at 3 (2012), citing Relco Locomotives, 358 NLRB No. 37, slip op. at 17 (2012), affd. and incorporated by reference at 361 NLRB No. 96 (2014). Protection is not denied because employees have not authorized another employee to act as their spokesperson. NLRB v. City Disposal Systems, 465 U.S. 822, 835 (1984).

Here, I find that Bedonie engaged in protected activity when she spoke about her "issues" with DeWitt, which affect her own working conditions. However, I do not find that Bedonie engaged in concerted activity. The credited evidence does not show that any of Bedonie's conversations were concerted. In each conversation, Bedonie spoke of only her own "issues" with DeWitt, and did not mention any sort of group action or concern. At the trial, Bedonie failed to elaborate upon the "issues" she had regarding DeWitt except that she felt mistreated,

picked on and felt unfairly treated. Bedonie testified to speaking with a few employees regarding her concerns about DeWitt's treatment of her; these "issues" she raised appeared to be limited to Bedonie's dislike of DeWitt's supervision of her.

On May 31, Bedonie spoke with Romero regarding her "issues" with DeWitt. She complained to Romero about how she did not like how DeWitt treated her and thought she was unfair. Bedonie testified even more generally that Romero also spoke about getting treated unfairly by DeWitt. On June 2, Bedonie spoke with Roberts again about "issues" with DeWitt. On June 9, Bedonie spoke with Roberts about DeWitt's "mistreatments" of her, and she also spoke with Jones about how DeWitt "mistreats" us. Bedonie went further and complained to Kriske about the way DeWitt treated her every day, and did not implicate other employees. None of these actions by Bedonie, objectively, indicate that she acted concertedly and engaged in for the purpose of mutual aid or protection.

There is little evidence that other employees shared Bedonie's concerns about DeWitt's supervision. Surely, it appears that the employees empathized with Bedonie but there is no evidence that they sought to act as a group to challenge DeWitt's supervisory conduct. Romero only expressed his dislike for DeWitt; Roberts gave Bedonie advice on whom else, other than Kriske, she could talk with about her "issues"; and Jones empathetically told Bedonie that DeWitt "mistreated" her as well when she started, which was a few months prior to Bedonie's start and towards the beginning of DeWitt's start as a supervisor. Bedonie testified that Roberts spoke to Kriske about DeWitt's supervision of Bedonie, not of herself or on behalf of other employees, and Roberts reported to Bedonie to keep doing her job. Nothing more was done by the employees to protest DeWitt's supervisory conduct—for example, no grievances were filed or discussed, no work stoppages or strikes occurred, and no petition was circulated. Even when Bedonie complained to Kriske about DeWitt, she did so in pursuit of her personal interest regarding how she was being treated by DeWitt, not how she and others were being treated. Bedonie never claimed to act or intend to act on behalf of any other employees, and did not seek to initiate, induce, or prepare for group action when she met with Kriske. Hence, Bedonie's mere griping or "issues" with DeWitt were purely personal in nature, and not concerted activity undertaken for mutual aid or protection.

The General Counsel relies on *Avalon-Carver Community Center*, 255 NLRB 1064 (1981) (citing *Dries & Krump Manufacturing, Inc.*, 221 NLRB 309 (1975)), for the proposition that Bedonie engaged in protected concerted activity when she complained about DeWitt, her supervisor (GC Br. at 21). However, in *Avalon-Carver Community Center*, the employees worked together to prepare and present a grievance concerning their criticism of the performance and attitude of their supervisor. The charging party's participation in this grievance was found to be protected concerted activity. In contrast, Bedonie only complained about the way she was being treated by DeWitt to her coworkers. Her coworkers empathetically listened to her complaints, with one providing her suggestions on how to approach her concern. When Bedonie went to DeWitt's supervisor, Kriske, she did not approach the meeting with a group concern, but rather her own personal gripe with DeWitt's attitude toward her. Thus, the fact specific inquiry and finding in *Avalon-Carter Community Center* are not analogous to the fact pattern here.

The fact pattern in *Belle of Sioux City, L.P.*, 333 NLRB 98 (2001), as cited by the General Counsel (GC Br. at 27), is most similar to facts here. In *Belle of Sioux City*, a casino operator asked two employees to choose between themselves which employee would go home before their shift ended due to lack of business. One employee disgusted with the situation said she would go home. Four days later she spoke to the manager asking him whether a scheduled employee should be sent home for lack of business. Preceding this comment, the employee and several of her coworkers spoke during breaks about her not being able to work on and get paid for the day she was sent home; in fact, the employees discussed this incident even when the affected employee was not present. The employees agreed with the affected employee that what happened to her was not fair, and they thought she should have been paid. Employees offered suggestions such as contacting the wage and hour board, and contacting human resources. The Board found that the employees' discussion of wages are inherently concerted, and that even though only one employee had been affected, the other employees learned of the possibility of confronting this same situation one day and thus, acted in solidarity in supporting the affected employee. Hence, the affected employee had been engaged in protected concerted activity. In contrast, Bedonie never expounded upon what her "issues" may have been except that she felt DeWitt treated her unfairly and mistreated her. Perhaps with more detailed, credited testimony, Bedonie could be found to have engaged in protected concerted activity, but the record is devoid of any evidence to support such a finding.

The General Counsel also cites to *Worldmark by Wyndham*, 356 NLRB No. 104, slip op. at 3 (2011), for the proposition that Bedonie engaged in concerted action because she "intended to induce group action" (GC Br. at 25). In *Worldmark by Wyndham*, the employee, in the presence of other employees, questioned a newly announced rule affecting all his male colleagues. Thus, by protesting publicly in a group meeting changes to working conditions common to all employees, the employee intended to initiate group action. Contrary to the General Counsel's argument, the facts present in this case are not similar. Bedonie only complained about how DeWitt treated her to several employees individually, and even when she spoke to Kriske only related her "issues" with DeWitt. I decline to infer that by continually discussing her own issues with employees and Kriske that Bedonie sought to induce group action.[36]

Furthermore, the General Counsel defines the "issues" Bedonie discussed as including how she and other employees would perform their work duties and "potentially how they would

[36] The General Counsel also cites to several other cases to demonstrate how her activity was both concerted and protected. *Triangle Electric Company*, 335 NLRB 1037, 1038 (2001) (employee distribution and solicitation of "strike newspaper" created by another newspaper's employees considered to be protected concerted activity); *Phoenix Transit System*, 337 NLRB 510, 513 (2002) (employee engaged in protected concerted activity when writing a union newsletter article critical of the company's handling of a sexual harassment complaint); *Fresh and Easy Neighborhood Market, Inc.*, 361 NLRB No. 12 (2014) (employee engaged in protected concerted activity for the purpose of mutual aid or protection when she solicited 3 other employees to sign a paper confirming her complaint about a message's sexually offensive nature). For the reasons stated above, Bedonie did not engage in protected, concerted activity as the facts presented here are not analogous to any of the cases cited by the General Counsel.

be compensated as DeWitt could send the employees home which would reduce the wages that employees could earn" (GC Br. at 27). Bedonie failed to testify to any specific detail including those as defined by the General Counsel in his brief. Thus, I decline to speculate as to what those "issues" would have or could have been. Again, based on the testimony and the documentary evidence, Bedonie discussed with her coworkers and Kriske her purely personal gripes regarding DeWitt, and there is no evidence to even suggest that she engaged in concerted activity undertaken for mutual aid or protection.

Accordingly, I find that the General Counsel has failed to show that Bedonie was engaged in concerted activity.

C. Respondent did not Threaten Employees, Including Bedonie, with Discharge if they Engaged in Protected Concerted Activity.

The complaint alleges at paragraph 4(b)(1) that since June 9, Respondent through DeWitt threatened employees with discharge if they engaged in protected concerted activity.

Under Section 7 of the Act, employees have the right to engage in concerted activities for their mutual aid or protection. Section 8(a)(1) makes it unlawful for an employer (via statements, conduct, or adverse employment action such as discipline or discharge) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7. *Relco Locomotives*, 358 NLRB No. 37, slip op. at 12 (2012), enfd. 734 F.3d 764 (8th Cir. 2013).

In general, the test for evaluating whether an employer's conduct or statements violate Section 8(a)(1) of the Act is whether the statements or conduct have a reasonable tendency to interfere with, restrain or coerce protected activities. Id.; *Station Casinos, LLC*, 358 NLRB No. 153, slip op. at 18–19 (2012); *Yoshi's Japanese Restaurant and Jazz House*, 330 NLRB 1339, 1339 fn. 3 (2000); *Farm Fresh*, supra, slip op. at 14. Apart from a few narrow exceptions, an employer's subjective motivation for its conduct or statements is irrelevant to the question of whether those actions violate Section 8(a)(1) of the Act. See *Station Casinos, LLC*, supra.

The only questions are which witness was more credible regarding what DeWitt said, and whether DeWitt's statement violated the Act. According to Bedonie, DeWitt stated to her, "if I catch you talking to other employees about me again, you're fired" (Tr. 123). However, as discussed above, I discredited Bedonie's testimony regarding this statement. The conversation between Bedonie and DeWitt arose because of Bedonie's frequent tardiness, to which Bedonie does not deny. DeWitt then went to gather the housekeeper rules to show to Bedonie regarding the procedures for calling in late and disciplinary process for tardiness. At this point, I find it incredulous that DeWitt would insert a comment regarding Bedonie talking to others about her and threatening her with discharge. Furthermore, Bedonie made no mention of the threat in her July 9 pretrial affidavit. Even if I were to find that DeWitt did make the statement to Bedonie, Bedonie's complaint about DeWitt's supervision of her was not concerted activity as discussed above. Hence, based on the credible testimony of DeWitt, I find that the General Counsel failed to show that Respondent violated Section 8(a)(1) by making a threatening statement to Bedonie.

D. DeWitt did not Engage in Surveillance of Employees or Create an Impression of Surveillance Among Employees.

The complaint alleges at paragraphs 4(b)(2) and (3) that since June 9, Respondent through DeWitt engaged in surveillance of its employees to discover their protected concerted activities and created an impression among its employees that their concerted activities were under surveillance.

A supervisor's routine observation of employees engaged in open Section 7 activity on company property does not constitute unlawful surveillance. However, an employer violates Section 8(a)(1) when it surveils employees engaged in Section 7 activity by observing them in a way that is out of the ordinary and thereby coercive. Indicia of coerciveness include the duration of the observation, the employer's distance from its employees while observing them, and whether the employer engaged in coercive behavior during its observation. *Aladdin Gaming, LLC*, 345 NLRB 585, 585–586 (2005), petition for review denied 515 F.3d 942 (9th Cir. 2008); *Farm Fresh Company, Target One, LLC*, 361 NLRB No. 83, slip op. at 18–19.

The Board's test for determining whether an employer has created an unlawful impression of surveillance is whether, under all the relevant circumstances, reasonable employees would assume from the statement or conduct in question that their protected activities have placed them under surveillance. *Metro One Loss Prevention Services*, 356 NLRB No. 20, slip op. at 14; see also *New Vista Nursing and Rehabilitation*, 358 NLRB No. 55, slip op. at 10 (2012) (noting that the standard for creating an unlawful impression of surveillance is met "when an employer reveals specific information about a union activity that is not generally known, and does not reveal its source"); *Flexsteel Industries*, 311 NLRB 257, 257 (1993) (noting that an employer creates an impression of surveillance by indicating that it is closely monitoring the degree of an employee's union activity involvement). The standard is an objective one, based on the rationale that employees should be free to participate in protected concerted activity without the fear that management is peering over their shoulders, taking note of who is involved in the protected activity, and in what particular ways. *Metro One Loss Prevention Services Group*, 356 NLRB No. 20, slip op. at 14; *Farm Fresh*, supra.

In this case, the General Counsel fell short of establishing facts demonstrating that Respondent unlawfully engaged in surveillance or created the impression of surveillance on or about June 9. Again, these two allegations rely solely upon witness' credibility. As stated previously, I do not credit Bedonie's version of events on June 9 for various reasons. First, it is unlikely that DeWitt who after retrieving the housekeeper rules would suddenly threaten Bedonie with discharge and admit watching her on the surveillance tapes and then switch back to discussing the housekeeper rules. Moreover, Bedonie failed to mention in her first pretrial affidavit that DeWitt allegedly observed her in the surveillance cameras talking to other employees about her, and then added these significant statements to a subsequent pretrial affidavit. But even if DeWitt watched the surveillance tapes, which admittedly she did not do in the regular course of her work, without audio, it seems unlikely DeWitt would even know that Bedonie was talking about her with other employees. In light of the weakness in Bedonie's testimony, and DeWitt's credible denial, I cannot find that DeWitt unlawfully engaged in surveillance, nor can I find that DeWitt engaged in conduct that would reasonably create the impression of surveillance as the General Counsel alleges. Moreover, as stated above, Bedonie

did not engage in concerted activity. Accordingly, I recommend that the allegations in paragraphs 4(b)(2) and (3) be dismissed.

E. Bedonie's Discharge did not Violate the Act.

The complaint, at paragraph 4(c), alleges that Bedonie was terminated because of her protected concerted activities, in violation of Section 8(a)(1) of the Act. An employee's discharge independently violates Section 8(a)(1) of the Act when it is motivated by employee activity protected by Section 7. *Lou's Transport*, 361 NLRB No. 158, slip op. at 2 (2014). To prove an adverse action violates Section 8(a)(1), the General Counsel must establish, by preponderant evidence , that: (1) the employee engaged in concerted activity, (2) the employer knew about the concerted activity, and (3) the employer had animus toward the activity. *Meyers Industries*, 268 NLRB 493, 497 (1984); *Grand Canyon University*, 359 NLRB No. 164 (2013). If the General Counsel is able to make such a showing, the burden of persuasion shifts to the employer "to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line*, 251 NLRB 1083, 1089 (1980). See also *Signature Flight Support,* 333 NRLB 1250, (2001) (applying *Wright Line* in context of discharge for protected concerted activity).

The employer cannot meet its burden by merely showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of protected conduct. *Bruce Packing Co.*, 357 NLRB No. 93, slip op. at 3–4 (2011); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443, 443 (1984). If the employer's proffered reasons are pretextual—i.e., either false or not actually relied on—the employer fails by definition to show it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation* Services, 351 NLRB 657, 659 (2007); *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003); *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). Absent a showing of antiunion, or anti-Section 7 activity, an employer may discharge an employee for a good reason, a bad reason or no reason at all without running afoul of the labor laws. See *Clothing Workers v. NLRB (AMF, Inc.)*, 564 F.2d 434, 440 (D.C. Cir. 1977).

As to the first factor, as stated above, I do not find that Bedonie engaged in concerted activity, but assuming arguendo that Bedonie engaged in protected, concerted activity, I continue my analysis. As for the second factor, in agreement with Respondent, I find that the General Counsel presented insufficient evidence to show that Respondent had notice that Bedonie acted in concert with other employees. DeWitt and Kriske credibly testified that they were unaware that Bedonie had spoken to other employees about DeWitt's supervision of her. The General Counsel argues that by DeWitt telling Bedonie that she had seen her on the surveillance video talking with other employees that DeWitt knew of Bedonie's conversations. However, as stated previously, I do not credit Bedonie's version of this conversation with DeWitt; even if DeWitt had seen Bedonie on the surveillance tape talking with other employees, which must happen daily and frequently in this hotel, DeWitt could not have known the details of the conversation since DeWitt testified unrefutedly that the surveillance tapes do not have audio. Furthermore, even when Bedonie spoke with Kriske about "mistreatments" by DeWitt, Bedonie never mentioned that she had spoken to other employees as well about how DeWitt treated her. Bedonie never confronted DeWitt about how she felt she was being treated, and never informed

DeWitt that she had been discussing her concerns with others. Thus, I do not find that Respondent was aware of Bedonie's protected concerted activity.

Even assuming Bedonie engaged in protected concerted activity which Respondent was aware, the General Counsel must next prove animus toward the protected activity. Improper motivation may be inferred from several factors, including pretextual and shifting reasons given for the employee's discharge, the timing between an employee's protected activities and the discharge, inconsistent treatment of employees, and the failure to adequately investigate alleged misconduct. *Temp Masters, Inc.*, 344 NLRB 1188, 1193 (2005); *Promedica Health Systems, Inc.*, 343 NLRB 1351, 1361 (2004); *Flour Daniel, Inc.* 311 NLRB 498 (1993). Discriminatory motive may also be established by showing departure from past practice or disparate treatment. See *JAMCO*, 294 NLRB 896, 905 (1989), aff'd mem., 927 F.2d 614 (11th Cir. 1991), cert. denied 502 U.S. 814 (1991); *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999).

Even if Bedonie's actions of complaining to her coworkers about her "issues" and "mistreatments" she had been receiving from DeWitt would be considered protected concerted activity with knowledge by Kriske and DeWitt, the General Counsel failed to show that Respondent's decision to discharge was substantially motivated by Bedonie's protected concerted activity. DeWitt and Kriske testified that they decided to discharge Bedonie primarily due to her cursing at DeWitt in the hotel lobby with guests present. While it is true that the written reasons set forth in the discharge paperwork do not set forth the details in the testimony provided by Kriske and DeWitt, Respondent did not tolerate cursing in the workplace under a variety of circumstances as evidence by the discharge of two other employees, both of whom are related to DeWitt. Hence, Respondent did not treat other employees disparately, even when the employees are related to DeWitt.

Bedonie also came to work on June 18 unscheduled, and at least initially resisted clocking out when requested. Furthermore, the record shows that Bedonie had known performance issues in the workplace. Significantly, these performance issues began well-before Bedonie began speaking with her coworkers regarding her "issues" with DeWitt. In early May, DeWitt counseled Bedonie twice on not staying past her scheduled duty time. DeWitt did not consider these counselings to be disciplinary actions, but rather feedback to help employees perform according to Respondent's standards. The fact that DeWitt counseled Bedonie for her housekeeping performance before any alleged protected activity weighs strongly against a finding that her performance based discharged was fabricated to conceal unlawful animus. DeWitt also credibly testified that she did not consider Bedonie's admitted tardiness in her decision to discharge because Bedonie did not receive the rules until June 9. Even on June 9, DeWitt informed Bedonie that Jones, her friend, had said she could not perform her job properly and DeWitt essentially agreed. It is clear from the record that Respondent did not discharge her for protected concerted activity, but rather for her cursing at the manager in front of hotel guests which is part of not performing her job duties properly.

The General Counsel argues that the timing of Bedonie's discharge is "strong evidence of Respondent's illegal motive" (GC Br. at 29). The General Counsel argues that Bedonie was fired only 2 weeks after her June 9 discussion with DeWitt. Again, as stated previously, I do not credit Bedonie's version of events on June 9 such that DeWitt threatened her with discharge based on her surveillance of Bedonie talking with other employees about her. Significantly, that

same day, DeWitt sent Jones to check on Bedonie when Kriske discovered by Bedonie was crying outside the hotel. If DeWitt had actually threatened Bedonie, it is unlikely she would have asked another employee to check on her. In addition, the week in which DeWitt fired Bedonie, she specifically listed on the schedule that Bedonie could be given rooms to clean if needed. These actions do not indicate animus by Respondent toward Bedonie.

The General Counsel alleges that Respondent's animus toward Bedonie can be demonstrated by the numerous times DeWitt sent Bedonie home early, as well as "yelling" at Jones to stop speaking to Bedonie after she clocked out (GC Br. at 29). The General Counsel presented only two possible instances when Respondent sent Bedonie home earlier than scheduled: June 3 and June 7. Even if DeWitt "yelled" at Jones not to talk to Bedonie, after Bedonie had clocked out, a reasonable inference can be made that since Jones was still working, DeWitt wanted her to continue working rather than conversing with Bedonie. Neither argument by the General Counsel shows animus by Respondent.

The General Counsel argues that Respondent failed to investigate Bedonie's actions on the day of her discharge unlike other employees who had been previously discharged (GC Br. at 30). I find this argument without merit. First, the record does not support the assertion that Respondent investigated the prior employees' actions before discharging them. Rather the various discharge documents and testimony of Kriske and DeWitt explain the reasons behind the discharge. At no point did Respondent state that it has an investigatory procedure before an employee is discharged. Rather Respondent discharged these employees either based on their actions on the day of the discharge (such as cursing at the manager) or for their poor performance and/or tardiness. Here, Bedonie came to work when she was not scheduled, the credited evidence shows she did not clock out when asked, and then cursed at her supervisor in the presence of hotel guests. Since DeWitt observed all these actions, it is unclear what investigation the General Counsel asserts Respondent should have performed. Certainly, when discussing the other discharges, neither Kriske nor DeWitt stated that those employees had an opportunity to refute the allegations leading to their discharge. Again, I do not find animus by Respondent when discharging Bedonie.

Finally, the General Counsel argues that Respondent shifted its reason for terminating DeWitt which suggests pretextual reasons for discharge (GC Br. at 31). When an employer is unable to maintain a consistent explanation for its conduct, but rather resorts to shifting defenses, "it raises the inference that the employer is 'grasping for reasons for justify its unlawful conduct.'" *Meaden Screw Products Co.*, 336 NLRB 298, 302 (2001), citing *Royal Development Co. v. NLRB,* 703 F.2d 363, 372 (9th Cir. 1983). See also *Master Security Services*, 270 NLRB 543, 552 (1984) (animus demonstrated where an employer used a multiplicity of reasons to justify disciplinary action). Although at first glance it appears that Respondent gave varied reasons for discharging Bedonie, DeWitt defined the poor work standards, or failure to perform duties properly, as Bedonie's difficulty cleaning rooms in a timely manner, coming to work unscheduled, refusing to clock out, and cursing at a manager in the presence of hotel guests. Bedonie should have been aware of her performance problems since she had received feedback from DeWitt on receiving permission from management before staying longer to help others clean their assigned hotel rooms, and checking back to make sure hotel guests needed their rooms cleaned. I do not find Respondent's expressed reasons for Bedonie's discharge as "shifting defenses."

Based on the foregoing, I find that the General Counsel has failed to meet its burden to prove that animus toward Bedonie's protected concerted activities motivated Respondent's decision to discharge her.

Assuming the General Counsel met the required initial burden of proving discriminatory motive, I find that Respondent proved that Bedonie would have been terminated even if she had not engaged in protected concerted activities. DeWitt credibly testified that Kriske ultimately decided to terminate Bedonie due to her cursing at DeWitt while hotel guests were present along with her performance problems. Thus, the actual decision to discharge came from Kriske, not DeWitt, which is critical since Bedonie alleged that DeWitt "mistreated" her. DeWitt's critique of Bedonie's performance as a housekeeper began well before any of Bedonie's conversations with her coworkers regarding the "issues" she had with DeWitt. Bedonie did not refute any of these criticisms by DeWitt as false at the hearing.

I therefore find that the General Counsel failed to prove that Respondent discharged Bedonie for unlawful reasons, and Respondent did not violate Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, as alleged in the complaint.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I issue the following recommended[37]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. April 7, 2015

Amita B. Tracy
Administrative Law Judge

[37] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.